The Solicitors' Journal

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CURRENT TOPICS

What is International Law?

LORD MAUGHAM'S article in the *Sunday Times* of 11th November was a contribution of incalculable value to the consolidation of international law and the cause of world peace. His acceptance of the view of Dr. LAWRENCE in his "Principles of International Law" (7th ed.) that international law might be defined as "the rules which determine the conduct of the general body of civilised States in their mutual dealings" will command fairly general approval. The addition of the words "whose violation gives the injured party a legal right to redress" did not commend itself to Lord Maugham, as in the last resort war was the only method of enforcement, and he cited the opinion of the first Lord Birkenhead in his work on "International Law" (6th ed., p. 9 *et seq.*). Further, on the nature of international law his lordship cited, with approval, *West Rand Central Gold Mining Co.* v. *R.* [1905] 2 K.B. 391; *Chung Chi Cheung* v. *The King* [1939] A.C. 160, and the opinion of Lord Macmillan in *The Christiana* [1938] A.C. 485. On the question whether international law is really law, Lord Maugham thought that that depended on the juridical meaning attached to "law." He cited Lord Birkenhead's work (*supra*, at pp. 8 and 9) and added that it was plain that there was no central government or other authority above the government of the several States which could secure the enforcement of the rules of international law, and therefore, international law was weaker than and different from domestic law. The real basis, his lordship said, was the consent expressed, presumed or implied, of civilised States ("Oppenheim on International Law," 5th ed., by Dr. Lauterpacht). Finally, his lordship said, no English court could accept or apply a rule of international law which conflicted with a British statute or purported to alter or supersede a definite principle of English common law. He invited jurists to join him in the conclusion that they should co-operate in an attempt to get the whole body of civilised States to meet together for the purpose of framing, as far as may be possible, a Code of the International Rules, binding on the signatories.

The Statutory Instruments Bill

LAWYERS in the House of Commons had a "busman's holiday" in the debate on 6th November on the motion for the second reading of the Statutory Instruments Bill. The SOLICITOR-GENERAL (Major Sir Frank Soskice, K.C.) said that the problem dealt with in a report of October, 1944, of a Scrutinising Committee of the House, and dealt with in the Bill had been inherited from the Coalition and Caretaker Governments. "Statutory instruments" included all rules, orders, bye-laws and Orders in Council made by Ministers or His Majesty in Council, pursuant to powers given by Acts of Parliament. The first object of the Bill was to provide a uniform period in which a statutory instrument should be laid before the House, and a period of forty days was provided by the Bill. It also provided a uniform method of reckoning the period, in terms of days during which the House sits, apart from week-ends. The Bill sought to repeal the Rules Publication Act, 1893, and to re-enact its good features. The Bill left out the "antecedent publicity" in the *Gazette* provided by the 1893 Act for certain statutory instruments but retained the provisions with regard to publication, numbering and furnishing copies of statutory instruments. The reason for leaving out the antecedent publicity, the Solicitor-General explained, was that forty days had to elapse in which nothing took place, but before that time the instrument had been discussed with interested parties and fashioned as a result of those discussions. Instead of the sanction that a statutory instrument should cease to have effect if not laid before the House in the statutory period, which, the Solicitor-General said, would result in the necessity for affirmative proof in police-court proceedings that the instrument had been laid before the House in the specified period, the instrument would have on the outside of the King's Printer's copy a statement showing the date on which the instrument came into operation. Further, under the Bill, the Treasury was to make a return to Parliament at specific periods calling attention to any statutory instruments which had been laid before Parliament and explaining why not.

Criticisms of the Bill

A SPIRITED debate followed. Mr. J. S. C. REID said that it was completely wrong in principle that an order should become law before it was published, as was permitted by the Bill. It was a complete farce to say that a man was presumed to know a law which had never been published. He referred to p. 66 of the Donoughmore Report of 1932, where it was stated that publication—possibly in the *Gazette*—should be a condition precedent to the coming into operation of a regulation. He thought that the sanction of a Treasury report for ensuring that an instrument should be laid before the House was too weak. The difficulty in the police court would be met by the onus of proof that an order had not been duly laid being placed on the accused, just as it was where he alleged that Parliament had annulled an order. Mr. Pickthorn, who confessed that he had been "a perpetual student of the Inner Temple for some thirty years," but had never passed a final, referred to the case of *Johnson* v. *Sargeant* [1918] 1 K.B. 101, in which Bailhache, J., held that an order was not in force until it "became known." He suggested that the terms of a parallel American Act should be examined,

and in particular, the clause that "the publication in the Federal Legislature of any document shall be a reputable presumption that it was duly issued, presented or promulgated." He also referred to the "case of the Cornish daffodils," where a person was convicted, although he could not possibly have known when he got into the train in Cornwall that he was offending against the law. Mr. Pickthorn might also have referred to the case of the Oxford College which was fined for buying eggs at more than the controlled price although the order was so recent that it could not possibly have been known to the defendants at the time of the purchase. "If *Johnson* v. *Sargeant* [1918] 1 K.B. 101 is good law," comments Dr. C. K. Allen, in his recent book "Law and Orders," there was a complete defence to this prosecution. Sir John Mellor said that many local authorities regarded the Bill with apprehension and referred to a circular letter from the Association of Municipal Corporations as to the need for the fullest opportunity for the consideration of representations by all persons affected. Major Conant also raised the question of publicity, and Mr. Sidney Silverman spoke in support of the Bill. Sir Harold Webbe, Mr. Maude and Mr. Manningham Buller all criticised the phrase "as soon as may be" in the provision, laying down the time when a statutory instrument must be sent to the King's Printer. The motion to read the Bill a second time was carried by 270 votes to 134.

The Emergency Laws (Transitional Provisions) Bill

THE first reading was given in the Commons, on 6th November, to the Emergency Laws (Transitional Provisions) Bill, the main objects of which, as described in an explanatory and financial memorandum, are (1) to continue in force for a limited period after the expiry of the Emergency Powers (Defence) Act, 1939, a number of Defence Regulations which are required for purposes falling outside the scope of the Supplies and Services (Transitional Powers) Bill; (2) to enact permanently a few other defence regulations; and (3) to extend certain emergency enactments whose duration or operation is linked with that of the Emergency Powers (Defence) Act, 1939. The First Schedule to the Act sets out a large number of defence regulations which are to be continued in force until 31st December, 1947, unless revoked at an earlier date. Among the more important of these are regs. 18 (entering and leaving the United Kingdom), 22 (billeting), 31A (evacuation), 39 (control of police forces), 39A (seducing persons from duty and causing disaffection), 42B (opening of cinemas on Sundays in England and Wales where forces are quartered), 42C (closing of undesirable premises), 42CA (unlawful gaming parties), 50 (power to do work on land), 50B (special provisions as to severance of fixtures), 52 (use of land for purposes of H.M. Forces), 55C (restrictions on registration of new clubs), 88A (entry and search of premises to obtain evidence of offences), the Defence (Administration of Justice) Regulations, 1940, the Defence (Companies) Regulations, 1940, the Defence (Evacuated Areas) Regulations, 1940, the Defence (Home Guard) Regulations, 1940, the Defence (Industrial Assurance) Regulations, 1943, the Defence (National Fire Service) Regulations, 1941, the Defence (National Service) Regulations, 1944, the Defence (Patents, Trade Marks, etc.) Regulations, 1941, the Defence (Trading with the Enemy) Regulations, 1940, and the Defence (War Risks Insurance) Regulations, 1940 to 1944. In some of the regulations the words "the protection of the public interest" are substituted for the words "the efficient prosecution of the war." Other important clauses are cl. 12 (which empowers local authorities to remove works which they have executed on land for the purpose of defence against hostile air attack), and cl. 16, which provides that where goods have been requisitioned in such circumstances as to give a right to compensation under s. 6 of the Compensation (Defence) Act, 1939, or under reg. 50B of the Defence (General) Regulations, 1939, the ownership of the goods shall be deemed to have vested in the Crown as from the time of the requisition.

Solicitors' Salaries

THE subject of minimum salaries, which was raised not long ago in correspondence to the Press from solicitor members of the Forces, is fraught with great difficulties, but difficulties were made to be overcome, and it is good to learn from the October issue of the *Law Society's Gazette* that the Council finds the matter of deep interest. The *Gazette* quotes an extract from the *Scottish Law Gazette* to the effect that "complaints as to the inadequacy of salaries . . . are not based on present experience," and that it would be quite impracticable to formulate a scale of salaries. Probably the average man in the Forces returning to civil employment will not only be dissatisfied but perhaps indignant at the over-frequent use of such words as "impracticable" and "impossible" by his elders. He will be apt to think that living conditions have been rendered tolerable in other walks of life by the concerted effort of those concerned, and to wonder why it should be "impracticable" to do so in the sphere in which he is particularly interested. The quoted extract goes on to point out that supply and demand are the factors determining remuneration, the quality of the man and the needs of the employer. Elaborating this, it points out that for some time before the war the profession was over-crowded, and not only the salaries of clerks, but also the profits of partners, were inclined to be inadequate. If the latter proposition was correct in the case of solicitors who could afford to employ admitted solicitors, then it would seem that the whole system of the remuneration of solicitors requires a drastic overhaul in everybody's interests. As to the remainder of the quotation, many solicitors will emphatically join issue. It reads: "The legal profession was at one time the easiest to enter: while the total work available did not increase in proportion to the entrants. It may be that now the quantity of remunerative work is tending to decline, although that may be compensated to some extent by the new schemes for legal assistance. However that may be, the immediate future is attractive for qualified men, and they need no protection to ensure the standard of living to which they are entitled." It is to be feared that much of this is "flattering unction." Protection is clearly needed for salaried solicitors, and they do not seek it from outside, but from their own united efforts, expressed through their accredited organisation.

Costs of Premises Requisitioned for Housing Purposes

IN a Ministry of Health Circular (183/45) dated 22nd October 1945, and addressed to all local authorities in England, it is stated that, save in exceptional circumstances of serious financial hardship, occupiers of requisitioned premises (or premises taken by agreement) should be required to pay an appropriate "rent" for the accommodation provided. This will vary according to the nature of the property. (i) In the case of a house occupied as a separate dwelling the charge should be the amount which would be recoverable by a landlord under the Rent Restriction Acts either in respect of the house concerned, or if the particular property had not been let or controlled, in respect of a comparable house in the neighbourhood; (ii) In the case of premises converted into flats or otherwise adapted for the occupation of more than one family, the charge to each occupier should be based on an apportionment of the compensation rental of the whole property. In both cases, rates (if these are not included in the compensation rental) should be added, plus 8 per cent. of the cost of any structural alterations or improvements, but excluding ordinary repairs, war damage repairs and decorations. Where recovery on this basis is not at present being made, authorities are asked to review the basis of assessment. This review should be carried out so that the amended charges shall operate from the first week of October, 1945, existing licences being either withdrawn and fresh ones issued or amended by agreement. Cases where a concession is made should be reviewed at intervals of not more than six months. Inquiries have been received from some authorities as to the effect of changes in the rate poundage. Such changes,

whether upward or downward, should be reflected in an adjustment of charge unless the occupier is paying rates as a separate item or the effect of the change is very small in amount, e.g., less than threepence per week. Where a change occurred on the 1st April, 1945, but action has not hitherto been taken to adjust charges, any revision should take effect from the first week of October, 1945. In some cases the compensation rental paid for requisitioned properties is, by agreement, inclusive of rates. In these cases any change in rate poundage should be accompanied by an appropriate variation in the compensation rental unless the effect of the change is very small in amount. No objection would be raised if, where so requested, authorities decide to make the adjustment retrospective to 1st April, 1945, in cases where rates have been increased from that date. There should, of course, be a corresponding variation (which should not be retrospective) in the amounts recoverable from the occupier.

Recent Decisions

In *Nugent-Head* v. *Jacob* (*Inspector of Taxes*), on 5th November (*The Times*, 6th November), MACNAGHTEN, J., held, reversing a decision of the Special Commissioners, that income received by the appellant from the U.S.A. under certain dispositions was not properly assessed on her but should have been assessed on her husband, with whom she would have been living in their home in London but for his absence on active service. His lordship said that there was no reason to construe para. (2) of the proviso to r. 16 of the General Rules applicable to All Schedules to the Income Tax Act, 1918, as qualifying para. (1), because it dealt with the very opposite case. He commented that the case illustrated the urgent need for the simplification and the clarification of the law relating to income tax.

In *Phillips* (*Inspector of Taxes*) v. *Emery*, on 6th November (*The Times*, 7th November), MACNAGHTEN, J., held that where a housewife was directed by the Minister of Labour to work at a factory, she was not entitled to deduct from her earnings for the purpose of ascertaining her taxable income the cost of travelling between her work and her home. His lordship held that s. 23 of the Finance Act, 1941, which gives relief to a weekly wage earner whose place of work or residence has changed owing to the war and has thereby incurred additional travelling expenses, had no application to the present case, because (1) it did not apply to an unpaid worker, such as a housewife, and (2) before the change, in this case before the direction by the Minister of Labour, the worker must have been engaged on work involving her in travelling expenses. The appellant in this case was not so engaged.

In *R.* v. *Joyce*, on 7th November (*The Times*, 8th November), the Court of Criminal Appeal (the LORD CHIEF JUSTICE, and HUMPHREYS and LYNSKEY, JJ.) held that an alien who had obtained a British passport by misrepresentation and had also obtained its renewal on 24th September, 1938, and again for one year on 24th August, 1939, owed allegiance to the Crown and was therefore guilty of high treason by adhering to the King's enemies elsewhere than in the King's realm between 18th September, 1939, and 2nd July, 1940, by broadcasting to the King's subjects propaganda on behalf of the said enemies, contrary to the Treason Act, 1351.

In *In re Cooper, deceased; Bendall* v. *Cooper*, on 9th November (*The Times*, 10th November), COHEN, J., held that the words " during the present war " in connection with gifts in a codicil to a will to be made in the event of deaths during that period of a number of members of the same family, meant during the continuance of hostilities with Germany because at the date of the codicil containing the phrase Japan was still neutral and the object of the provision was clearly to provide against the possible event of the extinction of the family by enemy action.

FROM SERVICE TO PRACTICE

SOME IMPRESSIONS

THE instinct which the returning warrior-solicitor finds it most difficult to curb is that to reach for the 'phone on every possible occasion. He will find he has an impulse to ring up Messrs. X and tell them that they can whistle for their money, to tell Mr. Y that he has other things to do than spend his time wading through files of papers, or to tell a clerk at the Probate Registry that he had better get a move on P.D.Q.

In spite of all that has been said about Service delays, returning solicitors will find the rather ponderous procedure of the legal world unfamiliar at first, and they may in passing ask themselves whether some of the briskness and lack of formality which characterises the more up-to-date Service establishments would not be an improvement. I remember that when I had been back in civil life for about four days I was asked at 10.15 one Wednesday if I would produce something which was required " rather urgently." I agreed but asked whether " three o'clock would do or was it wanted by mid-day ? " There was rather a mystified silence, and I was then told that it would be quite all right if it was ready any time next week. Newly returned solicitors often feel terribly guilty if they leave their offices at six and are astounded by the silence which pervades the neighbourhood at 6.30. This sense of guilt admittedly never lasts very long, although there have been reports of a conference suggested for " after dinner to-night." The bewildered recipient of the invitation had a hurried vision of himself catching the tube back from Ealing to a deserted city. Newly returned solicitors may find themselves compiling a " duty officers' roster " for their staff, and at least one gallant lawyer has been heard to refer to his employees as being " under my command."

However that may be, the most urgent problem for the returning solicitor is to attune himself to the law and the legal atmosphere : to train himself again to think and react as a lawyer and to regain the feel of legal principles and the legal approach. Frequently in the Army the topic arose of readjustment to civil life when the time came. Most people said they would find it difficult, but I always claimed that I should find it easy, and that two or three days after I left the Army I should feel as though I had never left the law. I was wrong : the first two months back in civil life I found incredibly difficult, and I almost gave up hope of ever regaining any pre-war knowledge that I had, apart from any question of catching up with developments during the war years. Then, quite suddenly, I began to progress. The memory of experiences from practice six years before began to return and the words of the text-books began to acquire life and meaning.

Perhaps I was uncommonly backward and possibly most people will begin to see light before the end of two months, but I do very strongly advise returning solicitors to spend a little time getting the feel of the law before they plunge back completely into practice. Let them not expect to be able to master the intricacies of a problem without preparation. They must not expect to be able to contend with the complexities of winding up a large estate unless they are prepared to spend some time first in reminding themselves of the provisions of the Administration of Estates Act and of the more important cases. In 1939 that could all be taken for granted, but in 1945 and 1946 memory is dim and practice rusted. Solicitors engaged in the courts will find it useful to pay a few visits as spectators before they venture on their feet. I do not want to exaggerate : admittedly the law is in the blood of all good lawyers, but other strains have been coursing through their veins.

Then, when they have again the feel of the law, most returning solicitors should spend quite a substantial amount of time in re-learning the pre-war law. Time and again I have heard solicitors who are attending classes on war-time developments or reading books on the subject say that they find they need reminding of the old law before they can begin

to learn the additions. A car which has been laid up needs treating with a certain amount of care, lest there should be some undetected weakness. Legal knowledge may appear sound on the surface but some detail may have been forgotten, and it is wise not to be too confident for the first few months. Many solicitors are finding it necessary to re-read some of the simpler students' books before they feel capable of tackling the subjects again, and that practice has everything to commend it.

So much for the old law; now for the new. It is surprising how much has changed. "The Modern Law Manual for Practitioners," which is concerned with the developments of the war years, is a very considerable volume. When one is in practice the changes in the law are noted almost unconsciously and it comes as something of a shock to find the accumulated arrears served up in one large volume. It is unwise to read the Modern Law Manual in isolation: it is far better to relate it to one of the students' text-books referred to above and to read them in combination. Further, many solicitors will need the stimulus afforded by oral tuition to back up both the manual and the text-book, and will take a course of refresher lectures.

I turn now to the question of starting again in practice as distinct from re-learning the law. There should be no fear of unemployment in the profession for many years to come. During the war there has been very little intake, whereas the subjects requiring the advice and assistance of solicitors have tended to increase and are not likely to diminish to any great extent. Nevertheless, many returning solicitors are hesitating before committing themselves to engaging again in private practice. On the one hand, those who were partners in a firm find great changes. They are forced to realise that in most cases a legal practice is not static but changeable. Most practices have a few clients who almost always have some business in hand, but it is more usual to do work for individuals who have it only rarely and who then themselves pass out of sight but recommend the firm to their friends. A solicitor who returns to a practice in which he was well known six years before will find, especially in the country, that a change in population, combined with his long absence, have made him almost unknown. He wonders whether it is worth while building up his goodwill almost from the beginning, or whether he would not be better advised to apply for an appointment with a public authority or a company. While, at the present time, it should not be difficult in most cases to build up a practice within a matter of a year or so, many men have little or no capital to tide them over the difficult period. Men who, six years ago, were prepared to face and enjoy the task of building up a practice, find themselves six years older and facing the prospect without the same zest. It is probable that there will be some competition for appointments in consequence.

On the other hand, there are many who were not in partnership before the war and who had only just qualified, in addition to those who were articled clerks when they were called up. Even if they have the necessary capital to enable them to enter into partnership, the majority will be reluctant to commit themselves too soon, whereas many will not have the means to become partners. To those the attractions of taking appointments will be very great, but apart from this, the only road open is to become managing clerks. Judging by the salaries being offered to qualified managing clerks in the advertisements at the present time, it is certain that a man who was twenty-two or twenty-three when the war began and will be nearly thirty by the time he is ready to begin work, and who may have attained the rank of major or its equivalent, or perhaps an even higher rank, will view with some alarm the prospect of living on £400 per annum, the salary which is often quoted. Further, such men during the course of the war may easily have found in themselves hidden talents and abilities which would go unused in the law, and many such may decide to try their fortunes in other fields. In these circumstances, firms wishing to employ managing clerks would be very well advised to offer rather more in the way of a salary than a managing clerk is worth at the outset. They may argue that his knowledge of the law is poor, but they should also realise that his general capacity to tackle work and make decisions will probably have increased enormously.

Those who decide to establish themselves in a new practice will find many stumbling blocks. Office accommodation is very short; staff, especially good shorthand-typists, is very difficult to obtain, and office furniture and equipment, which at the best is second-hand, is scarce and expensive. No doubt these conditions will improve as time goes on, but at present these are vital factors to be taken into account.

Such are the problems facing the ex-service solicitor, but it is clear that the future is by no means black. There is plenty of work; the profession is not overcrowded; many older men who have been holding on during the war will wish to retire and make room for the young. The Law Society is doing a great deal to ease the problems of transition and resettlement, and there are good prospects for those who are prepared to work. The ex-service men must not assume that they are as efficient as they were six years ago, but, on the other hand, those who have been in practice during the war must realise that those who went from them as boys are now experienced men. With understanding and generosity on both sides, there is no reason why the switchover should not be accomplished smoothly. As a profession we have every reason to be proud of our war record. A very high proportion of solicitors have been engaged on full-time National Service; wherever one went in any of the three Services or in Civil Defence, one found solicitors engaged in work of the very highest importance and usefulness, demonstrating their ability and versatility in the most remarkable way. With such material the profession should have no fears for the future.

COMPANY LAW AND PRACTICE

THE COHEN REPORT—IV—PRIVATE COMPANIES

THERE is a considerable discussion on private companies to be found in the report and some interesting information is contained in a table showing the numbers of both classes of company and the amount of paid-up capital for various years from 1930 to 1944. Those readers who have not read the report may be interested to learn that in 1930 there were 16,263 public companies with a total paid-up capital of £3,894 million, and in 1944 there were 13,303 public companies with a total paid-up capital of £4,052 million. Compared with these figures, in 1930 there were 95,598 private companies with a total paid-up capital of £1,591 million, and in 1944 there were 169,205 private companies with a total paid-up capital of £1,935 million.

It appears from this that the number of public companies is shrinking while the average paid-up capital is increasing, and the figures for 1939 do not indicate that these tendencies are due to war-time conditions. Private companies, however, increased rapidly in number over the whole period; by 51,137 in the years 1930–1939, and by a further 22,469 in the years 1940–1944, so the rate of increase does not appear to have been altered by war-time conditions. While the average paid-up capital of a private company in 1930 was something over £16,500, in 1944 it was just under £11,500, and it therefore looks not only as if they were rapidly increasing in numbers, but also that smaller and smaller businesses are taking advantage of limited liability. In view of the noticeable increase in the number of small companies, it is perhaps surprising that the average paid-up capital is as high as it appears to be from this table.

Dealing only with private companies working independently and apart from those which are subsidiaries of public companies, the two main reproaches that can be made against

the present system are that they in some cases facilitate frauds on outsiders who may become creditors of the company, and in other cases some of the members may be in a position to freeze out their fellow members.

The most highly prized of the privileges of a private company according to the report is the exemption from the obligation to include a written copy of their last balance sheet in the annual return. It has always seemed surprising that this exemption should be so highly prized, as it has generally been possible to draw up a balance sheet in such a form as to disclose practically no information of any value to anyone. However, as we shall see later, this may well not be the case in future, as the committee recommend that the accounts which are filed by companies should be much fuller than the law has hitherto required.

It was said before the committee that it was desirable that private companies should publish their accounts to enable traders to decide whether to grant credit or not and to enable trade unions to acquire information required to assess the justice of wage rates offered by employers. There was considerable difference of opinion as to the value to these two classes of the accounts being published.

Evidence was also given that the publication of accounts of small companies would give large companies trading in rivalry with them valuable information which the smaller companies would not get from the accounts of the larger companies, particularly where the larger companies' business was extremely diversified. It was further suggested that while the larger companies might make use of this information to drive the small companies out of business, the small ones, however much information they got, would not be able to attack the larger companies with any hope of success. The committee did not think that the publication of accounts by private companies would have such a one-sided effect, but they recognised that there were a number of small private companies at least as much in competition with partnerships and individuals as with public and private companies. For this reason, though they consider, in general, private companies should file their accounts, they recommend that a class of company which the report says can roughly be called "the small family business incorporated as a company" should be exempt from this obligation.

It would take up too much space here to set out in full the complicated definition of companies which they suggest should be included in this class. They are in substance companies none of whose members are other companies, and which have no other companies beneficially interested in any of their shares. Further, the members must be persons absolutely exclusively and beneficially entitled to the shares registered in their names or the executors or trustees of deceased members' wills or the trustees of members' marriage settlements or of settlements in favour of members or families of members. Similar limitations are suggested for the holders of debenture or other loan capital.

The report recognises that this definition will include some companies which cannot be described as small. There seems no difficulty in making this exception, though it means, of course, if it is adopted, that there will really be three different classes of limited companies instead of two. There will be public companies, private companies that have to file their accounts and, so to speak, private private companies which need not do so.

A further ground on which the committee decided that, except for this class of exempt companies, it was desirable that private companies should have to file their accounts was the argument that public companies by trading through subsidiary private companies can give the public and their members less information than they would have to give if they were carrying on business without those subsidiaries. This consideration, however, is not a serious one if the committee's recommendations for consolidated balance sheets and profit and loss accounts in the case of companies with subsidiary companies is acted upon. I do not propose to go into that question until I come to deal with that part of the report which deals with accounts generally. The proposed provisions as to accounts generally would in any case, apart from the specific provisions as to the accounts of private companies, prevent a company withdrawing from the public gaze behind veils of private companies.

With regard to the perpetration of frauds, the committee does not recommend any alteration of the law relating to private companies, though they do in a later part of the report make suggestions regarding companies generally with a view to strengthening s. 266 of the Companies Act and to discouraging long firm frauds and generally hampering swindles.

I now want to refer briefly to what the report says about the internal affairs of a company. There are various principles supposed to prevent the oppression of minorities in the present law, such as the rule that powers given to shareholders to vary the rights of their class of shares must "be exercised subject to a general principle which is applicable to all authorities conferred on majorities of classes enabling them to bind minorities: namely, that the power given must be exercised for the purpose of benefiting the class as a whole and not merely individual members only," *per* Lord Haldane in *British American Nickel Corporation* v. *O'Brien* [1927] A.C., at p. 370. In spite of these rules, however, and particularly in small private companies, the directors who wish to do down the other shareholders can, if sufficiently well advised, generally manage to do so. A situation where this can be done is more likely to arise when the second generation of the members of the company are in the saddle.

Various suggestions were made with a view to strengthening the minority shareholders of a private company in resisting oppression by the majority. One of the things witnesses complained of was directors paying themselves excessive remuneration, which is fairly simple for them to do if they hold a majority of the shares. The committee found it impossible to formulate specific recommendations, but they thought that it would be a step in the right direction to enlarge the power of the court to make a winding up order. As they point out, however, in many cases a winding up order will be no solution as the break-up value of the assets will probably be small and the oppressive majority are quite likely the only people who will want to purchase them. It therefore suggests that, in addition to a new power to make a winding up order notwithstanding the existence of an alternative remedy, the court should also have the power, instead of making a winding up order, to impose a settlement between the shareholders of the company. This suggestion is not limited to private companies, and I shall therefore deal with it more fully when discussing the winding up recommendations. Although proceedings to have such a settlement imposed might involve fearful complications, the power to bring such proceedings would be a useful weapon of defence for a minority.

Some people did not like the directors' power to restrict transfers of shares, as this causes hardship in cases where sales have to be made and a fair price cannot be got as a result of the restrictions. The committee considered those restrictions a useful way of keeping a family business under control of the family and did not recommend any change.

Three minor matters on which the report makes recommendations are that shareholders in private companies should have the same right to receive a copy of the accounts as is enjoyed by debenture-holders in public companies; that private companies must appoint at least one director and a secretary; and that partners or employees of officers of a private company should not be allowed to be auditors of the company.

At the annual meeting of the Blackpool and Fylde District Law Society, recently, Major A. Barker, of Messrs. Barker and Midgley, was elected president. Mr. J. R. Johnson was re-elected vice-president. Mr. W. Tillotson was re-elected hon. treasurer, and Lieut.-Col. Eric Read, T.D., was elected hon. secretary for the twentieth year.

A CONVEYANCER'S DIARY

MORTGAGES

I PROPOSE this week to mention one or two points on mortgages which have recently come to my attention. The first concerns the statutory receipt on repayment of the mortgage debt, as to which provision is made by L.P.A., s. 115. Before 1926 the way in which a freehold mortgage was brought to an end, on repayment of the mortgage debt, was by a reconveyance of the fee simple to the person entitled to the equity of redemption. Under present practice, of course, the mortgagee has a long term of years instead of the fee simple, so that the corresponding modern instrument would be a surrender or release of that term, not a reconveyance. Law of Property Act, s. 115 (4), expressly preserves the right of anyone entitled to a surrender or release to have such a document if he wishes: he is not compellable to have a statutory receipt. According to the notes in Wolstenholme (12th ed., p. 430), a surrender or release will still be used in some cases where the transactions have been complicated. But, in any ordinary case, a receipt should now be used. Such a receipt operates, under s. 115 (1), as a surrender of the mortgage term, merging it in the reversion immediately expectant thereon, and as a discharge of the property from the principal money, interest and all claims under the mortgage. In order to have this effect, the receipt must comply with subs. (1). That is to say, it must be endorsed on, or written at the foot of, or annexed to the mortgage (unless the mortgage consists of a mortgage and one or more further charges, in which case the receipt is to be on, or annexed to, one of the documents, and must refer either to all of the documents or to the aggregate amount secured (subs. (7)); the receipt must be executed by the mortgagee or chargee or other person legally entitled to give a receipt for the mortgage money; and the name of the person paying the money must be stated. These rules are subject to a proviso, set out in subs. (2), that the receipt is not to operate as a surrender and discharge, but as a transfer, in any case where " by the receipt the money appears to have been paid by a person not entitled to the immediate equity of redemption." Pausing there, we should next look at the form for a statutory receipt, provided in the Third Schedule to the Act. It is as follows: " I, A B of [etc.] hereby acknowledge that I have this —— day of —— 19—, received the sum of £—— representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] mortgage [and by a further charge dated etc.; *or otherwise as required*] together with all interest and costs, the payment having been made by C D of [etc.] and E F of [etc.]." If the reference to C D and E F were omitted, this receipt would not operate under s. 115 at all. If it " appears by the receipt " that C D and E F are not entitled to the immediate equity of redemption, the receipt will operate as a transfer to them; clearly, the title of C D and E F cannot " appear " from the receipt at all if the form is precisely followed. But I think that the material fact will so " appear " either if their title is expressly stated in the receipt, by way of amplification of the form, or if it can be collected from the whole of the compound document consisting of the receipt and the instrument or instruments to which it is annexed. If C D and E F are in fact entitled to the immediate equity, the receipt will discharge the mortgage under subs. (1). That subsection has nothing about their title " appearing " from the receipt, but I conceive that the true construction of subs. (1) and (2) involves that an " appearance " within subs. (2) will override the true state of facts. That it should be so is consistent with the general scheme of the property legislation, which is, so far as possible, to make instruments valid to do that which they purport to do, and to exclude the necessity for extrinsic evidence.

Subsection (2) is, however, subject to two qualifications. By para. (*a*), the proviso is not to operate " if it is otherwise expressly provided." That is to say, if C D and E F " appear " not to be entitled to the immediate equity of redemption, the receipt can continue, amplifying the prescribed form, as follows: " Provided always that this receipt is to operate as a surrender of the term created by the annexed mortgage and in a discharge of all principal money, interest and costs secured thereby, notwithstanding that the said C D and E F are not entitled to the immediate equity of redemption." Where such words as these appear, no one can claim that the mortgage is still alive, the express provisions being paramount. Paragraph (*b*) negatives the transfer if " the mortgage is paid off out of capital money, or other money in the hands of a trustee or personal representative properly applicable for the discharge of the mortgage, and [if] it is not expressly provided that the receipt is to operate as a transfer." This paragraph has to be read with the note at the foot of the form prescribed in the Third Schedule to the Act, which is as follows: " If the persons paying are not entitled to the equity of redemption, state they are paying the money out of a fund applicable to the discharge of the mortgage." This note is rather too widely expressed, because para. (*b*) deals only with cases where the payment is made by a personal representative or trustee. In my view, therefore, the proper way of bringing para. (*b*) into effect is to follow the prescribed form right to the end and to add after the name of E F the words " the personal representatives of X deceased who are making the payment out of money in their hands properly applicable to the discharge of the mortgage." If this form is followed, I do not see how a subsequent purchaser could challenge the validity of the discharge effected by the receipt, even if the documents did not show, upon their face, that X was, immediately before his death, entitled to the immediate equity of redemption.

The other point concerns the Courts (Emergency Powers) Act, 1943. Under s. 1 (2) of that Act (like its predecessors) " a person shall not be entitled, except with the leave of the appropriate court, (*a*) to proceed to exercise any remedy which is available to him by way of (v) the realisation of any security." This section makes it impossible for a mortgagee to confer on a purchaser any title by a purported exercise of his power of sale, unless the appropriate court has given leave, or unless the case is one in which the mortgagee was in possession, or had appointed a receiver who was in possession, at the outbreak of war in 1939: see schedule to the Act of 1943, para. 1. In every case, therefore, where a title depends on the exercise by a mortgagee of his power of sale since the war of 1939 began, the abstract must show the order of the court authorising the sale or must adduce evidence that the mortgagee or a receiver was in possession at the outbreak of war. This evidence should be in the form of a statutory declaration, giving as much detail as possible. Such a declaration will become more and more difficult to procure in a convincing form as time goes on; therefore, in any case where a title depends on this evidence, and where such evidence is not readily accessible, the present owner should put in hand the obtaining of it at once. No doubt the possession of the purchaser will be adverse, both to the mortgagee and the mortgagor, so that in the course of time his title will become good under the Limitation Act; but titles of that sort cannot accrue in less than twelve years, and may easily take very much longer. In any case, a statutory title is expensive to prove and tends to diminish the price of the land.

Under the Courts (Emergency Powers) Acts of the war of 1914–19, it was contemplated that a mortgagor could validly waive the protection afforded him by those Acts (see *Anchor Trust Co.* v. *Bell* [1926] Ch. 805). Though the wording of the present Act seems scarcely distinguishable, it has been held that no such waiver is now possible (*Soho Square Syndicate, Ltd.* v. *Pollard* [1940] Ch. 638). That decision has been accepted as correct in all the later cases on related subjects. So far have matters gone, indeed, that it was seriously thought at one stage that a mortgagee who acquired the equity of redemption after the outbreak of war could not enter into possession without the leave of the court (see

Bowmaker v. *Tabor* [1941] 2 K.B. 1; *Smart Bros.* v. *Ross* [1942] Ch. 158, and *Sun Life Assurance* v. *Relton* [1942] Ch. 384). It now seems, however, in view of *Smart Bros.* v. *Ross* [1943] A.C. 84 (where the House of Lords unanimously reversed the majority decision of the Court of Appeal) that the true view is that a mortgagee may take possession in such a case if his acquisition of the equity of redemption is part of a *bona fide* new arrangement between himself and the mortgagor, cancelling the former arrangement, but not if it is a mere device to evade the Courts (Emergency Powers) Act.

WAR DAMAGE, VALUE PAYMENTS AND ESTATE DUTY

With reference to my recent comment on the treatment of value payments for purposes of estate duty, my attention has been called to an answer given in the House of Commons by the then Chancellor of the Exchequer, the late Sir Kingsley Wood, on 2nd July, 1942. He is reported to have said that a value payment is added to the other property passing on the death for the purpose of determining the rate of duty " and a provisional estimate of the amount of the value payment should be made for that purpose." He added that " duty in respect of the value payment will not be collected until payment is received." I should be grateful for information as to how these propositions are applied in practice. It appears from Dymond, 8th ed., pp. 114, 115, that, if payment of duty on reversionary property is deferred till the property falls into possession, the reversionary interest has to be valued for purposes of aggregation and payment of duty on the rest of the estate at its value at the date of death, though duty is eventually payable on the amount which actually falls in, at a rate ascertained by aggregating that amount with the value of the rest of the estate as already ascertained. As explained by Dymond, this rule may mean that a different rate is levied on the amount realised from that paid on the rest of the estate. At the moment I do not see how the value to be put on the right to receive the value payment in making the " provisional estimate " mentioned by Sir Kingsley Wood could be anything but nominal, having regard to the facts that the amount of the value payment, even if agreed with the War Damage Commission before the main payment of duty, is subject to the rules in the War Damage Act postponing payment to an unascertainable date and forbidding the assignment of the right to payment (compare on this last point the cases on shares in private companies whose transfer is restricted: see Dymond, p. 113). I cannot find that the point has been tested in the courts.

LANDLORD AND TENANT NOTEBOOK

SERVICES AS RENT

It is for the sake of completeness, no doubt, that the more comprehensive text-books tell us that rent need not be money. But the news that some people who are able to do so are seeking to solve " the domestic servant problem "—and part of the housing problem—by offering exclusive possession of rooms constituting a flat in return for services, may make us refer to some of the authorities on the subject. It is, perhaps, surprising that at least one decision is less than a century old.

That rent need not consist of cash is, essentially, a corrollary to the definition of rent. Coke illustrates the proposition in these terms: " And the rent may as well be in the delivery of hens, capons, roses, spurres, bowes, shafts, horses, hawkes, pepper, comine, wheat or other profit that lyeth in render, *office*, *attendance*, and such like, as in payment of money " (s. 213). If some of the articles mentioned as examples of payment in kind were to figure in a modern lease, headaches would undoubtedly ensue for the legal advisers of certain official bodies concerned with licences, prices, etc.; however, it is " office, attendance, and such like " that I propose to discuss.

The oldest recorded case referred to in this connection is *Letten* v. *Winne* (1697), 1 Lut. 245; it is, however, unlikely to prove helpful in settling disputes of the kind we are contemplating, for the essential point was whether, if a landlord had a right to money or kind—part of the rent was to be two turkeys worth 10s.—or 10s.—he might elect, and if so, how and when. It was held he had the right and could exercise it informally up to the last minute; this state of affairs is not likely to be paralleled in the circumstances visualised, but what is of interest and what may provoke thought is that the parties were assignees of reversion and term respectively.

Mention may be made of a decision far older still, reported in Y.B. 42 Edw. III, 3, in which it was held that the benefit of the covenant in a deed made by a prior, to sing all the week (*sic*) in a chapel on the covenantee's estate, passed to the covenantee's descendants, the estate having been entailed; for this authority is not only referred to in Coke's comments on the *Spencer's Case* (Co. Rep. V, 18) but relied on the more recent *Vyvyan* v. *Arthur* (1823), 1 B. & C. 410. In that case a 99-year lease granted in 1779 provided for rent partly in money and partly " in suits and services "; the action was brought by the devisee of the lessor against the administratrix of the lessee, alleging that the deceased tenant had failed to observe the " suit " obligation, which was to have all the corn grown on the demised land ground at the lessor's mill. It was held that the plaintiff could enforce this obligation as assignee; and while there was no claim in respect of whatever services were to have been performed, it is instructive that Bayley, J.'s judgment included the following: " It is by no means unusual for the owner of a mansion and estate to stipulate with his tenants that they shall carry coals to his mansion, and perform other similar services, and as long as the ownership of the mansion and estate continues in the same person, those services are in the nature of rent, to be rendered to the reversioner of the lands demised."

R. v. *Inhabitants of Newington Next Hythe* (1828), 7 L.J. (o.s.) M.C. 25, was a " settlement " case; a waggoner who had been remunerated partly by a right to pasture a couple of cows in his employer's field subsequently became a pauper; the magistrates valued the right in question at over £10, and their decision that he had rented a tenement of that value and thereby gained a settlement in the parish concerned was upheld.

Then in *Doe d. Tucker* v. *Morse* (1830), 1 B. & Ad. 365, the fact that a tenant had been called upon to perform agreed services after a cause of forfeiture had accrued was held to constitute waiver by acceptance of rent. In *Doe d. Edney* v. *Benham* (1845), 7 Q.B. 976, churchwardens and overseers had allowed an aged parishioner to occupy a house in return for sweeping the church, and this was held to create a tenancy and affect the decision of a question of limitation.

The above two cases merely emphasise the validity of the proposition that rent can consist of services, including those of a domestic nature. The most recent case, *Duke of Marlborough* v. *Osborn* (1864), 5 B. & S. 67, does little more; but it does stress the importance of expressing agreements of this kind in clear terms. The dispute turned on the meaning of " team-work " in a covenant by a tenant to perform each year for the plaintiff at the rate of one day's team-work with two horses and a proper person for every £50 of rent when required " without being paid for the same." When other points had been disposed of, protracted argument ensued on the question whether this obliged the tenant, when called upon to convey coal to Blenheim Palace, to supply his own vehicle. Dictionaries were quoted on both sides; so were poets: Wordsworth and Gray to support one view, Shakespeare and Dryden the other, while judicial impartiality was exemplified when one of the judges quoted Anon. In the end the court found for the tenant, by a majority; and it is not surprising that one judgment concludes by lamenting that the instrument was not more precise.

This is perhaps the chief lesson given by these cases; but we have also seen that there can be no doubt but that a valid tenancy can be created reserving only a right to domestic services by way of rent. It would also seem that, while rent must be "certain," it would not be necessary to agree the precise extent, as opposed to the nature, of the services; how many cups should be washed up per week, etc. If the servant is to be tenant, it would be as well to make this clear by some delimitation of the premises; though in none of the cases cited has there been a licence *v.* tenancy argument. As to the possibility of protection, even if the premises are unfurnished it is doubtful whether the Increase of Rent, etc., Acts apply at all; a somewhat strained application of *R.* v. *Inhabitants of Newington Next Hythe, supra,* might enable a court to assess a rent which might be not less than two-thirds of the rateable value, but para. (*g*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, would normally enable the landlord to recover possession if he wanted to replace his servant by another: not, it should be noted, if he had decided to give up trying to solve the problem. And, in the absence of direct authority on what would happen to the burden of the reddendum in the event of assignment of the term, an absolute covenant against alienation is strongly recommended to intending landlord-employers.

TO-DAY AND YESTERDAY

November 12.—Every well-appointed law library contains Richard Burn's "Justice of the Peace and Parish Officer," and his "Ecclesiastical Law." He was a Westmorland man born at Winton in 1709. He was educated at Queen's College, Oxford, and obtained the degree of LL.D. In 1736 he became Vicar of Orton in Westmorland, where he died on the 12th November, 1785. In 1765 he was appointed Chancellor of the Diocese of Carlisle. His portrait, prefixed to his "Law Dictionary," published posthumously, represents him as a stout meditative looking man in clerical garb with something the appearance of a lethargic Dr. Johnson. His son's preface speaks of his "very considerable attainments, not only in the learned and gothic languages and in the law of the land but also in matters of antiquity."

November 13.—On the 13th November, 1589, the Gray's Inn benchers ordered "of the call of the utter-barristers last called it is agreed that there shall be allowed but such four as the then Reader shall nominate and such as have performed their exercises and by the rule may be called."

November 14.—On the 14th November, 1927, Oscar Slater was released from Peterhead Prison where he had been since 1909. On highly unsatisfactory evidence he had been convicted of the mysterious murder of an old lady in Glasgow. General opinion was so dissatisfied that the death sentence was commuted to penal servitude for life. While he was in prison there was constant agitation for the re-opening of the case. When the appeal was heard in 1928 the conviction was quashed.

November 15.—The year 1667 saw the fall of Lord Chancellor Clarendon. On the 15th November Pepys noted: "A conference between the two Houses to-day so I stayed, and it was only to tell the Commons that the Lords cannot agree to the confining or sequestring of the Earl of Clarendon from the Parliament, forasmuch as they do not specify any particular crime which they lay upon him and call treason." Nevertheless his enemies speedily drove him into exile.

November 16.—George Lancaster became clerk to a respectable London attorney but fell into bad habits and his master advised his parents to send him to sea. Accordingly, he sailed as captain's clerk in one of the ships of the Royal Navy. After some years, when she was paid off, he received a considerable sum which he squandered, also exhausting the credit of his now widowed mother. Then he took to forgery. A seaman of the *Dorchester* named Price died and Lancaster forged a will purporting to be his, obtaining probate by swearing he was his son. He was subsequently detected, convicted and hanged at Tyburn on the 16th November, 1747.

November 17.—In the latter half of the sixteenth century a good deal of construction and reconstruction was going on in Gray's Inn, largely owing to the enterprise of the members who were granted building leases by the Society. What is now the south half of Gray's Inn Square was then an enclosed court known as Chapel Court. North of that Coney Court was just taking shape but was still referred to as "the back court." In May, 1578, Walter Ashton was granted a lease of certain ground there, but on the 17th November, the benchers having reconsidered the matter, the land comprised in the lease was somewhat altered to make his holding "more meet and convenient for the better and more uniform order of building, less hurtful to the trees growing upon the same ground first before granted." The site of Ashton's buildings must have been what is now the north-east corner of Gray's Inn Square.

November 18.—In 1586 the Privy Council made an order that the Inns of Court should appoint porters "who shall every night half an hour after nine of the clock shut up the gates of the said houses and so keep them shut until half an hour before five in the morning." On the 18th November, 1590, after a decent interval for reflection, the benchers of Gray's Inn ordered "that there shall be a porter appointed to keep the gates but who shall be thereunto appointed and what chamber and what wages he shall have and of other circumstances this pension will further devise thereof."

Equality for Welsh

A recent Ministry of Education pamphlet, reviewing the question of language teaching in the primary schools in Wales, states that every child should be given the opportunity of learning both English and Welsh. Thus, after four centuries, time brings a revenge and part of the policy of Henry VIII is reversed. He aimed not only at the political union of England and Wales and the abolition of the laws and customs then prevailing in Wales, but also at the extirpation of the Welsh language. A statute of 1535 enacted that English must be the official language of the courts and that if their officers were Welsh they must be bilingual. Nevertheless, in the Courts of Great Session, Wales was given a separate system of judicature which endured till 1830, when it was abolished in favour of the English circuit system, despite a cheapness and efficiency, which had won the praise of Lord Mansfield. From the first, however, the fly in the ointment had been the language question. As early as 1575 a letter to Sir Francis Walsingham from Edward Davies, a lawyer, who "hath been the Queen's Attorney in the Welsh Marches and . . . can speak the Welsh tongue, though no Welshman," noted "that it were convenient that one of the Justices of Assize did understand the Welsh tongue for now the Justice of Assize must have an interpreter. And, therefore, many times, the evidence is told according to the mind of the interpreter whereby the evidence is expounded contrarily to that which is said by the examinate." In 1830 the interpreter was still needful, and it was laid down that Welsh litigants in civil actions must pay the fee for his services.

Reaching an Understanding

It is said that once when Baron Bramwell was trying a prisoner on the South Wales Circuit, the defending counsel asked leave to address a few words to the jury in Welsh. After he had done so there was a startlingly prompt verdict of acquittal. A subsequent inquiry what learned counsel had said elicited the reply: "Oh, he just said, 'This case, gentlemen, lies in a nutshell. You see yourselves exactly how it stands. The judge is an Englishman, the prosecuting counsel is an Englishman, the complainant is an Englishman. But you are Welsh and I am Welsh and the prisoner is Welsh. Need I say more? I leave it all to you'." It was often obvious that Welsh speaking juries understood but little of what was said to them in English by judge or counsel. In 1933 there was a curious case at the Caernarvonshire Quarter Sessions when prisoner, witnesses, jurors, advocates and most of the justices were Welsh-speaking. The chairman, Mr. Lloyd George, suggested that the hearing should be in Welsh, but this proved impossible because the shorthand writer was an Englishman. Some of the disabilities of the Welsh tongue were removed by the Welsh Courts Act, 1942.

The Directors of the Legal & General Assurance Society, Ltd., have declared an interim dividend for the year 1945 at the same rate as for the previous year, namely, 1s. per share, less income tax, payable on the 1st January, 1946.

COUNTY COURT LETTER

Membership of Tenant's Family

IN *Thurlby* v. *Robinson and Fairman and Wife*, at Stamford County Court, the claim was for possession of 15, Stanley Street, Stamford. The plaintiff's case was that she required the property for sale to help provide for her old age. The statutory tenant had been a Mr. F. E. Youngs, who died on the 12th April, 1945. His widow then became the statutory tenant, but she died three weeks later. The house then ceased to be within the protection of the Rent Acts. Mr. Youngs had informed the plaintiff's son in April, 1938, that he (Mr. Youngs) would have to give notice, but this notice was later withdrawn. Thereupon Mr. Youngs became the statutory tenant. The defence denied the latter contention. A rent book for 1915 showed that the tenant was Mrs. A. R. Harper (Mrs. Young's name by her first marriage) and rent books for 1934 to 1940 showed that the tenant was Mrs. Youngs. On her death, the protection of the Rent Acts was extended to the first defendant (a sister of Mrs. Youngs) and to Mrs. Fairman (a niece of Mrs. Youngs) as members of her family living with her at the time of her death, within the meaning of s. 12 (1) (*g*) of the Increase of Rent, etc., Act, 1920. His Honour Judge Field, K.C., held that Mrs. Youngs was the tenant up to the time of her death, and the protection of the Acts extended to Mrs. Robinson. There was no point, therefore, in giving judgment against Mr. and Mrs. Fairman. The application for possession was dismissed, with costs. Compare *Pain* v. *Cobb*, 47 T.L.R. 596.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Counsel at Nuremberg

Sir,—Criticism of the Bar Council decision that English counsel ought not to appear for the defence of war criminals at Nuremberg, on the grounds put forward by Mr. Harvey Moore and Serjeant Sullivan, is surely quite unrealistic.

All the world knows that the accused are war criminals of the worst kind, and the Bar Council—quite properly, in my view—describes them as such, notwithstanding the fact that the trials have not yet taken place. To do otherwise would be hypocritical.

Is there not something unreal in Mr. Harvey Moore's remark that " we hold no man guilty till convicted," when writing about Goering and his fellows ?

This kind of attitude has led to the unhappy spectacle of the Belsen trial, which unfortunately has only served to bring British justice into disrepute.

London, W.C.1. R. MILLNER.
12th November.

SOCIETIES

BATH LAW SOCIETY

At the annual meeting of the Bath Law Society, Mr. G. E. Hughes was re-elected President, Mr. A. I. Ingram Vice-President, and Mr. F. E. Ogburn Hon. Treasurer.

Mr. T. Vezey was appointed Hon. Secretary, an office which he held prior to joining the Forces in 1940 and which, during his absence, was filled by Mr. G. E. Hughes.

The Committee were appointed as follows: Messrs. J. F. S. Carpenter, A. G. C. King, H. C. C. Lee, W. F. Long, G. E. Longrigg, G. E. Macdonald, A. E. Marshall, T. E. B. Pye-Smith, P. M. Rogers and E. M. Trounson.

Mr. S. E. Naish was re-appointed Secretary to the Poor Persons Committee.

The President welcomed the return of several members who had been serving in the Forces, and stated that it was hoped that the remaining serving members would be released at an early date. It was satisfactory to note that there had been no casualties amongst members of the Society.

THE MEDICO-LEGAL SOCIETY

An ordinary meeting of the Society will be held at Manson House, 26, Portland Place, W.1 (Tel.: Langham 2127), on Thursday, 22nd November, 1945, at 8.15 p.m., when a paper will be read by Mr. T. Mervyn Jones, M.A., LL.M., on " The Medico-Legal Aspects of War Injuries."

At the monthly meeting of the Directors of the Solicitors Benevolent Association, held on the 7th November, 1945, grants amounting to £2,288 10s. were made to thirty-two beneficiaries.

NOTES OF CASES

COURT OF APPEAL

Williams' Trustees *v.* Inland Revenue Commissioners

Scott, Lawrence and Morton, L.JJ. 13th June, 1945

Revenue—Income tax—Charity—" Welsh people . . . visiting London "—Claim for exemption—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *s.* 37 (1) (*a*), *Sched. A.*

Appeal from a decision of Macnaghten, J.

Certain houses in London were vested in the appellant trustees for the purpose, as stated in the trust deed, " of establishing and maintaining an institute and meeting place in London to be known as ' The London Welsh Association ' " a company limited by guarantee " (hereinafter called ' the institute ') for the benefit of Welsh people resident in or near or visiting London with a view to creating a centre in London for promoting the moral, social, spiritual and educational welfare of Welsh people, and fostering the study of the Welsh language and of Welsh history, literature, music and art." The expression " Welsh people " was stated to mean " persons of Welsh nationality by birth or descent or born or educated or at any time domiciled in the Principality of Wales or the County of Monmouth." The trustees claimed exemption from tax under Sched. A to the Income Tax Act, 1918, in respect of the properties on the grounds that the trust was for charitable purposes, and that the moneys in question were applied for charitable purposes only within s. 37 (1) (*a*) of the Act. The Commissioners for the General Purposes of the Income Tax Acts dismissed the claim, and the Commissioners for the Special Purposes of those Acts affirmed their decision. Macnaghten, J., dismissed the trustees' appeal, and they now appealed to the Court of Appeal. (*Cur. adv. vult.*)

SCOTT, L.J., said that the main argument for the trustees was that the trust fell within the fourth of Lord Macnaghten's categories in *Commissioners for Special Purposes of Income Tax* v. *Pemsel* [1891] A.C. 531, at p. 583: " For purposes beneficial to the community not falling under the heads of the relief of poverty, the advancement of education, or the advancement of religion "; and that it was " a public trust for the benefit of a definite community," the Welsh community. They relied on *Verge* v. *Somerville* [1924] A.C. 496, at p. 503, as showing that poverty was not an essential attribute of such a community; and that a particular class of persons, like soldiers returning to New South Wales after the last war, might constitute such a community (at p. 506). There were two fallacies in that argument: To constitute such a charity there must be a purely public trust for the benefit of the definite community to be benefited, and not a trust for the benefit of individuals; and it must be of such a general kind as would permit of the court's making a scheme for its administration, that being the only way in which the community could enjoy such a public charity (see *In re Smith; Public Trustee* v. *Smith* [1932] 1 Ch. 153, *per* Lawrence, L.J. (at pp. 171–172), and *per* Romer, L.J. (at pp. 174–175), and the full examination there made of *In re Compton; Powell* v. *Compton* [1945] 1 Ch. 123). Here it was impossible to say that there was any definite community such as could confer a public quality on the purposes of the trust. The definition of Welsh people in cl. 1 of the trust deed included persons of any nationality who had ever been " educated " or at any time " domiciled " in Wales; and cl. 4 directed the application of the trust moneys to the establishment and maintenance of the institute as a meeting place in London for everybody falling within that very wide definition who might happen to be resident in or visiting London, with a view to creating a centre for their social welfare. Clause 5 carried that social aspect of the institute still further away from a public charity by several of its specific directions as to the use of the institute, in particular para. (*a*) " for providing a meeting place for Welsh people in London and their friends where they can obtain facilities for social intercourse, study, reading, rest, recreation and refreshment." Such provisions sufficed of themselves to justify the Commissioners' conclusions that an ordinary social club was a main object of the institute. Even if it was only one function, it was enough to prevent the trust from being, in the eyes of the law, a " public charity," or for the " benefit of a defined community." There was no way in which a court of equity could prevent the Welsh Association, Ltd., in their capacity of managers of the institute, from using the trust moneys to carry out the non-charitable functions of the institute. Lastly, the specific condition laid down in s. 37 (1) must be truly satisfied if exemption from tax was to be claimed, namely, that the rents and profits of the trust houses must be applied only to charitable purposes. It was plainly impossible to say that there

was no evidence to support the Commissioners' finding that that condition was not satisfied.

LAWRENCE and MORTON, L.JJ., delivered concurring judgments.

Leave granted to appeal to House of Lords.

COUNSEL: *King*, K.C., and *Bucher*; *The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), *Stamp*, *Hills* and *Anthony Gordon*.

SOLICITORS: *T. D. Jones & Co.*; *Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

***In re* Mayfair and General Property Trust, Ltd; Crang *v.* Mayfair and General Property Trust, Ltd.**

Vaisey, J. 31st July, 1945

Companies—Debenture holders' action—Receiver appointed—Properties charged let at inclusive rents—Liability of receiver for arrears of rates.

Summons.

M. Ltd. had issued debenture stock secured, *inter alia*, upon certain flats and offices owned by G.D. Ltd., a subsidiary of M. Ltd. The plaintiffs were the trustees of the deed securing this stock. D. Ltd. had let the flats and offices in question to tenants at rents inclusive of rates. In an action by the debenture-holders, P was on the 5th March, 1940, appointed receiver and manager of the property charged and took over the assets of both companies. This summons in the action was taken out by the W. Corporation, the rating authority for the area in which the flats and offices were situated, asking that the receiver be directed to pay the unpaid rates in respect of the half-year prior to his appointment as receiver for those premises, or, alternatively, that such unpaid rates might be paid out of moneys in court to the credit of the action. The applicants contended that it would be unconscionable for an officer of the court (such as the receiver) to retain the benefit of the increased rents which he had received by reason of such rents being inclusive rents. Still less would the court order payment out of funds in court consisting in part of such swollen rents without making satisfaction of the applicant's claim.

VAISEY, J., said that he could not see that the claims of the rating authority could be put higher than the claims of the ordinary creditors when in competition with secured creditors. The applicants had had remedies which they forbore to exercise. The point, however, seemed to be covered by *In re British Fullers' Earth Co., Ltd.*, 17 T.L.R. 232, which he would follow. There was no element of fraud or dishonesty in this case. The principle that an officer of the court would always be controlled if he attempted to bring about a fraud or injustice was well established, but this was not such a case. He would say nothing about the rates for the half-year towards the end of which the receiver was appointed. Those were, he understood, to be treated as preferential under the Companies Act, 1929, ss. 78 and 264. The application failed.

COUNSEL: *Wilfrid Hunt*; *Pennyquick*.

SOLICITORS: *Allen & Son*; *Last, Sons & Fitton*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

***In re* Foot and Hall Beddall & Co., Ltd.'s Agreement; Hall Beddall & Co., Ltd. *v.* Foot**

Cohen, J. 15th October, 1945

Trust for sale—Partnership—One partner seeks order for sale of partnership land—Discretion of court to order sale.

Adjourned summons.

By an agreement dated 2nd June, 1936, made between the defendant and the plaintiff company, it was agreed that the plaintiffs should build a block of flats on the defendant's land and that, subject to successive options vested in the defendant and plaintiffs to purchase the others' interest in the property, which were not exercised, it was to be sold when the building was completed and the net proceeds divided between the defendant and the plaintiffs in proportion to their capital interest in the premises. Pending any such sale, the flats were to be let and the net proceeds divided between the parties equally. The building was duly completed and the flats let. In 1944 the plaintiffs agreed a price for the sale of the property with a prospective purchaser. The defendant was not informed of the negotiations until the price had been fixed. She then refused to concur in the sale on the ground that the price was inadequate. The plaintiffs took out this summons asking for an order directing the defendant to concur in the sale of the property. At the hearing the defendant offered to pay £100 more for the property than the prospective purchaser had offered.

COHEN, J., said that the summons was based on the existence of an immediate binding trust for sale. If the agreement did not constitute such a trust for sale, such a trust arose under s. 35 of the Law of Property Act, 1925. He was invited to dismiss the application on the ground that, as the relationship between the parties was that of partnership or joint adventures, the appropriate remedy was that of a partnership or analogous action. The answer to that contention was that the plaintiffs had alternative remedies and they were entitled to elect which they would pursue. It did not follow, however, that they were entitled to the relief they sought. A trustee for sale was bound to secure the best price reasonably obtainable. The obvious method of securing this was to sell by auction. It was said that he ought to exclude the defendant's offer to purchase because a trustee could not purchase from himself. If this was an ordinary trust for sale, he would have been inclined to agree that he should have disregarded her offer. The agreement, however, which constituted this trust was in the nature of a partnership or joint adventure. Had the question of a sale come before him in an action to wind up the affairs of the joint adventure, he would probably have directed a sale by auction and have given the defendant leave to bid. The plaintiffs would not be prejudiced if the defendant's offer were accepted. He had come to the conclusion that, on the defendant's undertaking to purchase the property at the price she had offered, the order asked for should be refused.

COUNSEL: *G. Hewins*; *Montgomery White*.

SOLICITORS: *Payne & Co.*; *Fairchild Greig & Co.*, for *Wells and Philpot*, Guildford.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

BRITISH SETTLEMENTS BILL [H.C.].
Read First Time. [6th November.

EXPIRING LAWS CONTINUANCE BILL [H.C.].
Read First Time. [7th November.

SUPPLIES AND SERVICES (TRANSITIONAL POWERS) BILL [H.C.].
Reported without Amendment. [8th November.

HOUSE OF COMMONS

ASSURANCE COMPANIES BILL [H.C.].
Read Second Time. [12th November.

CHARTERED AND OTHER BODIES (RESUMPTION OF ELECTIONS) BILL [H.L.].
Read Third Time. [6th November.

DOCK WORKERS (REGISTRATION OF EMPLOYMENT) BILL [H.C.].
Read Second Time. [12th November.

EMERGENCY LAWS (TRANSITIONAL PROVISIONS) BILL [H.C.].

To provide for the continuation of certain Defence Regulations during a limited period notwithstanding the expiry of the Emergency Powers (Defence) Acts, 1939 to 1945, and for the extension and amendment of certain enactments the duration or operation of which depends on the duration of the said Acts or of the war; for the permanent enactment of provisions contained in certain Defence Regulations; for establishing the ownership of the Crown of goods requisitioned under emergency powers; for empowering local authorities to remove war works and restore land; for the repeal of certain emergency enactments.

Read First Time. [6th November.

ISLE OF MAN (CUSTOMS) BILL [H.C.].

To amend the law with respect to Customs in the Isle of Man.

Read Second Time. [8th November.

NATIONAL SERVICE (RELEASE OF CONSCIENTIOUS OBJECTORS) BILL [H.C.].
Read Second Time. [9th November.

POLICE (OVERSEAS SERVICE) BILL [H.C.].
Read Second Time. [9th November.

STATUTORY INSTRUMENTS BILL [H.C.].
Read Second Time. [6th November.

TRUNK ROADS BILL [H.C.].
Read Second Time. [8th November.

WAR DAMAGE (VALUATION APPEALS) BILL [H.L.].
Read Second Time. [9th November.

QUESTIONS TO MINISTERS

REINSTATEMENT IN CIVIL EMPLOYMENT

Sir T. MOORE asked the Minister of Labour what is the position of a former employee as regards reinstatement in a firm which has gone into liquidation and been bought by another business since the employee joined the Forces; and if he will clarify the position generally.

Mr. ISAACS: In a case of this sort, regard must be had to the provisions of s. 7 (2) of the Reinstatement in Civil Employment Act, 1944. If an applicant has rights under the Act, and a change has taken place in the person carrying on the undertaking where

he was last employed, or that undertaking has become comprised in another undertaking, any obligation to reinstate him rests on the person for the time being carrying on the undertaking. [6th November.

PATENT LAW

Major BOYD-CARPENTER asked the President of the Board of Trade whether he intends to introduce in the near future any amendment in the patent law.

Sir STAFFORD CRIPPS: Steps are being taken to prepare a Bill to implement the recommendations contained in the First Interim Report of the Swan Committee as to the procedure for extension of term of patents in cases where the patentee has suffered loss or damage as a result of the war, and to make other provisions to deal with war circumstances, but I cannot say when the legislation will be introduced. [12th November.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1945

No. 1354. **Czecho-Slovakia** (Restrictions on Banking Accounts, etc.) (Termination) Order. Oct. 30.

E.P. 1361. **Defence General Regulations** Order in Council adding Regulations 68CA to the Defence (General) Regulations, 1939. Oct. 30.

No. 1370. **Foreign Jurisdiction.** East African Territories (Air Transport) Order in Council. Oct. 30.

E.P. 1381. **Navigation Order,** No. 36. Oct. 30.

E.P. 1362. **Parliamentary Under-Secretaries.** Order in Council, amending the Defence (Parliamentary Under-Secretaries) Regulations, 1940. Oct. 30.

No. 1338. **Trading with the Enemy.** (Specified Persons) (Amendment) (No. 11) Order. Oct. 30.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

Honours and Appointments

The India Office announces that the King has been pleased to appoint Mr. CECIL HARRY ANDREW BENNETT, barrister-at-law, to be a Judge of the High Court in Patna in the vacancy that will occur on the retirement of Mr. Justice Varma. Mr. Bennett was called by the Inner Temple in 1922.

The Lord Chancellor has made the following appointments consequent on the elevation of the Honourable Mr. Justice Jones, M.C., to the High Court of Justice:—

Judge DRUCQUER to be the Judge of Westminster County Court;

Mr. JOHN NORMAN DAYNES, K.C., to be a Judge of County Courts and to sit temporarily at Brentford and Willesden County Courts.

The Lord Chancellor has appointed Mr. JOHN HAROLD SOADY to be the Registrar of the Tonbridge, Tunbridge Wells and Sevenoaks County Courts and District Registrar in the District Registry of the High Court of Justice in Tonbridge as from the 1st November, 1945. Mr. Soady has been acting as Deputy Registrar at Tonbridge and Sevenoaks for some time past for Mr. D. B. H. Warner, the Registrar of those Courts, who has now retired. He has also been acting as Registrar at Tunbridge Wells since the late Registrar of that court died in 1943. Mr. Soady was admitted in 1911.

COURT PAPERS

SUPREME COURT OF JUDICATURE

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

MICHAELMAS SITTINGS, 1945

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Uthwatt.
Mon., Nov. 19	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., ,, 20	Hay	Jones	Reader
Wed., ,, 21	Farr	Reader	Hay
Thurs., ,, 22	Blaker	Hay	Farr
Fri., ,, 23	Andrews	Farr	Blaker
Sat., ,, 24	Jones	Blaker	Andrews

	Group A.		Group B.	
Date.	Mr. Justice Cohen. *Non-Witness.*	Mr. Justice Vaisey. *Witness.*	Mr. Justice Evershed. *Witness.*	Mr. Justice Romer. *Non-Witness.*
Mon., Nov. 19	Mr. Blaker	Mr. Farr	Mr. Reader	Mr. Hay
Tues., ,, 20	Andrews	Blaker	Hay	Farr
Wed., ,, 21	Jones	Andrews	Farr	Blaker
Thurs., ,, 22	Reader	Jones	Blaker	Andrews
Fri., ,, 23	Hay	Reader	Andrews	Jones
Sat., ,, 24	Farr	Hay	Jones	Reader

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Nov. 12 1945	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	110¾	3 12 3	2 17 0
Consols 2½%	JAJO	91¾	2 14 6	—
War Loan 3% 1955–59	AO	102½	2 18 8	2 14 6
War Loan 3½% 1952 or after	JD	103⅛	3 7 11	3 0 0
Funding 4% Loan 1960–90	MN	113½	3 10 8	2 16 10
Funding 3% Loan 1959–69	AO	101	2 19 5	2 18 2
Funding 2¾% Loan 1952–57	JD	100⅛xd	2 14 9	2 13 3
Funding 2½% Loan 1956–61	AO	98⅝	2 10 7	2 12 1
Victory 4% Loan Av. life 18 years	MS	113½	3 10 6	3 0 4
Conversion 3½% Loan 1961 or after	AO	106⅛	3 5 9	2 19 3
National Defence Loan 3% 1954–58	JJ	102½	2 18 6	2 12 11
National War Bonds 2½% 1952–54	MS	100⅛	2 9 8	2 8 10
Savings Bonds 3% 1955–65	FA	101⅛	2 19 1	2 16 7
Savings Bonds 3% 1960–70	MS	100⅛	2 19 6	2 18 9
Local Loans 3% Stock	JAJO	97¾	3 1 4	—
Bank Stock	AO	398	3 0 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	99½	3 0 4	—
Guaranteed 2¾% Stock (Irish Land Act 1903)	JJ	96	2 17 4	—
Redemption 3% 1986–96	AO	102⅛	2 18 6	2 17 10
Sudan 4½% 1939–73 Av. life 16 years	FA	117	3 16 11	3 2 8
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	1 16 0
Tanganyika 4% Guaranteed 1951–71	FA	106	3 15 6	2 13 11
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	98	2 11 0	2 14 10
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	107	3 14 9	3 3 5
Australia (Commonw'h) 3½% 1964–74	JJ	101	3 4 4	3 3 8
Australia (Commonw'h) 3% 1955–58	AO	100	3 0 0	3 0 0
†Nigeria 4% 1963	AO	114	3 10 2	2 19 8
*Queensland 3½% 1950–70	JJ	102	3 8 8	2 19 4
Southern Rhodesia 3½% 1961–66	JJ	107	3 5 5	2 18 9
Trinidad 3% 1965–70	AO	100	3 0 0	3 0 0
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940–60	AO	101	2 19 5	—
*Leeds 3¼% 1958–62	JJ	103	3 3 1	2 19 0
*Liverpool 3% 1954–64	MN	101	2 19 5	2 17 4
Liverpool 3¼% Red'mable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	97½	3 1 6	—
*London County 3½% 1954–59	FA	106	3 6 0	2 14 0
Manchester 3% 1941 or after	FA	98½	3 0 11	—
*Manchester 3% 1958–63	AO	101	2 19 5	2 18 2
Met. Water Board 3% "A" 1963–2003	AO	99	3 0 7	3 1 0
*Do do. 3% "B" 1934–2003	MS	100¼	2 19 10	—
*Do. do. 3% "E" 1953–73	JJ	101	2 19 5	2 17 0
Middlesex C.C. 3% 1961–66	MS	101	2 19 5	2 18 4
*Newcastle 3% Consolidated 1957	MS	101	2 19 5	2 18 0
Nottingham 3% Irredeemable	MN	97	3 1 10	—
Sheffield Corporation 3½% 1968	JJ	107	3 5 5	3 1 6
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	111¼	3 11 9	—
Gt. Western Rly. 4½% Debenture	JJ	117	3 16 11	—
Gt. Western Rly. 5% Debenture	JJ	128	3 18 2	—
Gt. Western Rly. 5% Rent Charge	FA	125½	3 19 8	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	122½	4 1 8	—
Gt. Western Rly. 5% Preference	MA	107½	4 13 0	—

* Not available to Trustees over par.
† Not available to Trustees over 115.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date: in the case of other Stocks, as at the latest date.

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